IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

FAO.No. 172 of 2007()

AGAINST THE ORDER DATED / / IN IA 5822 2006 IN OS.427/2006 of II ADDL.SUB COURT,KOZHIKODE

.....

: APPELLANTS/PETITIONER/PETITIONERS:

---

1. A.P. MUHAMMED, AGED 41 YEARS,
S/O. AMBALAPARAMBIL IMBICHI MAMMI HAJI,
LIYA MANZIL, ARAMPURAM, P.O. PADANILAM,
MADAVOOR AMSOM, DESOM, KOZHIKODE TALUK.

2. A.P. MUJEEB, AGED 35 YEARS,
S/O. IMBICHI MAMMI HAJI, AMBALAPARAMBIL HOUSE,
KUNNAMANGALAM DESOM, KOZHIKODE TALUK.

BY ADV. SRI.V.GIRI
SRI.O.D.SIVADAS
SRI.NELSON JOSE.K.

RESPONDENTS: RESPONDENT/DEFENDANT:

K. DEVARAJAN, S/O. KURUMBOOR KRISHNAN,
'REVATHY', KALATHUMKUNNU AMSOM, DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.JACOB ABRAHAM(CAVEATOR)
SRI.S.V.BALAKRISHNA IYER (SR.)
SRI.K.JAYAKUMAR
SRI.P.B.KRISHNAN
SRI.K.JACOB ABRAHAM
SMT.GEETHA P.MENON

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

Kurian Joseph & T.R. Ramachandran Nair, JJ.

**- - - -

Counsel appearing for the appellants and Shri S.V. Balakrishna Iyyer, learned Senior counsel for the respondent. It was argued by the learned Senior Counsel for the appellant that in the circumstances of the case and in the nature of the reliefs sought, unless an injunction as sought for is granted, it will prejudice the rights of the appellants. Learned Senior Counsel for the respondent pointed out that the plaintiffs are not entitled for any reliefs in the suit and that there is total failure on their part in performing their part of the contract.

3. It is a case where the reliefs sought for is one for specific performance of an agreement for sale of the plaint schedule property. Of course, the parties are at dispute on the various aspects but any decision on its merits now will prejudice the stand of either one or the other of the parties. Therefore, we refrain from doing so. The entire issues relating to the reliefs claimed in the suit are yet to be adjudicated. The court below has discussed in detail the pleadings and the circumstances for considering the prayer for granting interim injunction. In view of the order we propose to pass, we are not entering any findings on those aspects. We only observe that the observations and findings are only for the purpose of considering the prayer in the interlocutory application for injunction and are only primafacie impressions. Both the parties agree that in the

circumstances of the case, an expeditious disposal of the suit will render justice to them.

4. Hence, we set aside the order impugned here. There will be a direction to the court below to dispose of O.S. No.427/2006 expeditiously, at any rate, within a period of four months from today. The status-quo as on today as regards the plaint schedule property, will continue till the disposal of the suit.

5. Learned Senior counsel for the respondent pointed out that his party had complied with the direction issued by the trial court by depositing the amount, viz. the advance sale consideration with interest before the court below. The respondent can seek appropriate directions from the court below for withdrawing the said amount, without prejudice to his contentions in the suit.

The appeal is disposed of as above. No costs.

(Kurian Joseph, Judge.)

(T.R. Ramachandran Nair, Judge.)

kav/